

owners in those rare instances when application of the formula would produce a negative rate to instead retain the preceding period's positive rate. Any pole owners dissatisfied with that approach could, of course, seek a waiver and, upon full cost support, charge rates based on incremental costs. Unlike SWBT's proposal, this approach would both prevent pole owners from gaming a mid-stream rule change and ensure that rates always lie within the statutorily approved range of reasonable charges.²⁷

B. No Downward Adjustment To The Amount Of Usable Space Is Warranted.

Instead of accommodating the expanding need for access to poles, ducts, conduits, and rights-of-way, electric utilities have simultaneously taken the remarkable positions that the presumptive pole height (and thus costs) should be increased while the presumptive amount of

(. . . continued)

nonpositive. NPRM n.59, ¶ 25 ("We believe that the adjustment may properly be applied only after the net asset balance for poles has become negative"). Second, the Commission should apply a negative return carrying charge and adjust the tax component as proposed (id. ¶¶ 26-27) to reflect the fact that the inclusion of net salvage creates not only overrecovery in early years, but a regulatory "asset" on which pole owners have enjoyed an unwarranted return in early years.

²⁶ See, e.g., American Cablesystems of Florida v. Florida Power & Light Co., CC Docket No. 95-95 ¶ 10 (released June 15, 1995).

²⁷ The use of gross book costs would also result in overcompensation. Specifically, the decrease in carrying costs could be far overshadowed by the substantially larger investment base. And, despite extensive cost recovery to date, the cost recovery process would be effectively reset to the beginning of the pole's life -- at least so far as maintenance, depreciation, and administrative costs are concerned -- the period when pole attachment rates are highest. Thus, the Commission is correct in its belief "that because of the way administrative costs are allocated, the application of gross book costs may produce a . . . higher rate." NPRM ¶ 29. The Commission has always "stated a preference for 'net' figures" (TeleCable of Piedmont v. Duke Power Co., "Hearing Designation Order," CC Docket No. 95-93 ¶ 13 (released June 15, 1995)) and isolated instances of negative rates that are easily curable through a waiver process surely cannot justify scrapping the net book cost formula in its entirety.

usable space should be decreased.²⁸ At least two false premises underlie this sleight of hand. The utilities first urge that the Commission's 18 foot average clearance assumption ignores "line sag" and that, accounting for line sag, 19.8 feet of clearance is necessary to meet the National Electric Safety Code's ("NESC") 18 foot ground clearance specification. But that would substitute a maximum clearance value for the Commission's proper use of an average clearance value in a formula designed to estimate average pole costs. In this regard, the NESC only requires 18 feet of clearance when an electric line is crossing "[r]oads, streets, and other areas subject to truck traffic." NESC at 78. Moreover, as the NESC makes clear, the 18 foot clearance specification applies only to electric lines; telecommunications companies are only required to provide 15.5 to 16 feet of ground clearance -- a figure that falls to 15 feet in some instances. Id. at 78-79.²⁹ Line sag is similarly sensitive to many factors, particularly the distance between poles and the type of wire or cable. For example, a 900 pair copper cable weighs approximately 2.8 lbs./ft. whereas a reinforced sheath fiber optic cable weighs only approximately 0.15 lbs./ft.³⁰ Thus, the utilities have offered no legitimate basis to change the existing 18 foot presumption -- although the clearance requirement for some poles (i.e., electric poles spanning roads) may be slightly higher, the clearance requirement for most poles is significantly lower.

²⁸ "Just and Reasonable Rates and Charges For Pole Attachments: The Utility Perspective," A Position Paper Presented By: American Electric Power Service Corp., Commonwealth Edison Company, Duke Power Company, Entergy Services, Inc., Florida Power & Light Company, Northern States Power Company, The Southern Company, and Washington Water Power Company (filed Aug. 28, 1996) ("Utility White Paper").

²⁹ Washington requires that all attachments "be placed not less than twelve feet above the surface of the ground." Wash. Rev. Code § 70.54.090 (1997) (emphasis added).

³⁰ Picture 10 in the attached Appendix depicts the difference the different weights of copper cable and fiber optic cable can have on the degree of line sag. Of course, other factors such as the amount of tension on the cable also affect the amount of line sag.

Second, the utilities' claim that the 40-inch "safety space" between electric and communication lines required by NESC should be treated as unusable space -- rather than usable space properly assigned to the electric utility whose hazardous lines create the need for that space -- is meritless. It is solely the presence of the electric utility's hazardous lines that makes this safety margin necessary, and for that reason alone it is appropriate that electric utilities bear the full cost of that space -- which but for the presence of the hazardous electric lines could be used by attachers.³¹ In other words, the electric utility is actually using that space even if its lines do not physically occupy the safety space. Moreover, many poles do not have electric lines attached to them and thus they are more fully utilizable by low voltage attachers. In any event, the safety space clearly is usable by electric utilities. See Opinion and Order, Adoption of Rules for the Regulation of Cable Television Pole Attachments, CC Docket No. 78-144 ¶ 10 (released March 10, 1980) ("[t]he issue is not whether the space is actually used, but whether it is usable"). The presence of third party attachers on the pole in no way diminishes the ability of an electric utility to use the safety space and, although third party attachers are not permitted to use the safety space, that space is usable to accommodate "street light brackets, transformers, and the like [which] are 'associated equipment' within the meaning of the provision." Id. Further, not only

³¹ The New York Public Service Commission recently reaffirmed its decision not to allocate the cost of electric safety space to attachers, (In the Matter of Certain Pole Attachment Issues Which Arose in Case 94-C-0095, "Opinion and Order Setting Pole Attachment Rates," at 14-15 (New York PSC, June 17, 1997)), as did the Illinois Commerce Commission less than 4 years ago. Order, Re Pole Attachments by Cable Television Systems, 80-0249 (Ill. Commerce Comm'n, Dec. 23, 1993), aff'd Central Illinois Pub. Serv. Co. v. Illinois Commerce Comm'n, 644 N.E.2d 817 (Ill. Dec. 1994).

do electric utilities actually use safety space for these purposes,³² AT&T understands that some utilities have recently proposed placing non-conductive telecommunications cables in the safety space. In sum, the electric utilities proposed usable space adjustments are entirely improper and provide no legitimate basis for changing the rate formula presumptions³³ (although the utilities are, of course, entitled to attempt to rebut those presumptions in specific cases).³⁴

Finally, the utilities related attempt to inflate pole costs by removing 30-foot poles from cost calculations because such poles are “unusable” for attachments is equally baseless. As the utilities are well aware, 30 foot poles can be -- and, indeed, are -- shared. Indeed, correcting for the electric utilities’ flawed ground clearance and safety space assumptions, even a 30 foot pole will have more than six feet of usable space. Moreover, 30 foot poles not only remain in use, pole owners continue to deploy them in large numbers.³⁵

³² Pictures 19-22 in the attached Appendix depict examples of a streetlight being placed in an electric utility’s safety space.

³³ See also Central Illinois Pub. Ser’v Co. v. Illinois Commerce Commission, 644 N.E.2d 817 (Ill. Dec. 1994) (Illinois applies a rebuttable presumption of 14 feet of usable space).

³⁴ Other proposals in the Utility White Paper, including the proposals for onerous “approval,” “identification” and “notification” requirements (at 18-21), are clearly beyond the scope of this proceeding and should be addressed with other structure access issues in the Commission’s local competition dockets. In those proceedings, it will, of course, be critical that the Commission safeguard nondiscriminatory access by telecommunications companies to these facilities.

³⁵ Statistics on the heights of new poles are compiled by the Southern Pressure Treaters Association, among others. It is AT&T’s understanding that over 20% of the new wood poles ordered in recent years have measured 30 feet or less.

III. AT&T DOES NOT OPPOSE CONFORMING ADJUSTMENTS TO THE RULES NECESSARY TO REFLECT THE CHANGE FROM PART 31 TO PART 32 AND CERTAIN STATES' DISCONTINUANCE OF RATE-OF-RETURN FINDINGS.

Although AT&T opposes the utilities' proposals to modify the rate formula in ways designed only to inflate rates and eliminate the balance the formula is designed to achieve, AT&T does not oppose the Commission's truly technical modification proposals to reflect changes in its accounting rules and in the availability of state data for use in the rate formula.

A. Mapping Part 32 Accounts To Part 31 Accounts. As the Commission notes, the current rate formula refers to Part 31 rules that applied at the time the formula was adopted. Part 31 was, however, replaced by Part 32 in 1988, and it is therefore necessary to map the new Part 32 accounts to their Part 31 counterparts and to revise the formula accordingly. AT&T does not oppose the specific mapping proposals in the NPRM relating to the administrative component, the maintenance component and the tax component.

B. Rate-of-Return. The Commission has historically required utilities to use their state-determined retail service rates-of-return in the pole attachment rate formula. As the Commission notes, however, many utilities are now subject to incentive regulation, and the state commissions that regulate them therefore no longer have any need to determine rates-of-return. Older rates of return, particularly those calculated during inflationary periods, are unlikely to provide reasonable values for current pole attachment proceedings. Although AT&T agrees that a substitute is needed, the Commission's approved rate-of-return of 11.25% -- which is itself out-of-date and, as the Commission recognized in its Local Competition Order (§ 702) may therefore

be too high -- is not an appropriate one.³⁶ Rather, for incumbent LECs, the Commission should first turn to state arbitration and related proceedings under section 252 of the 1996 Act, in which some states have recently made utility-specific forward-looking cost-of-capital determinations.³⁷ For states that have not yet made any such findings, the Commission should look to the Cost of Capital White Paper by Bradford Cornell, submitted in Docket No. 96-98, which provides a detailed analysis of the current costs-of-capital for the GTOCs, RBOCs, and SNET -- at least until the Commission has had the opportunity to revisit its outdated 11.25% finding in light of current data.³⁸

³⁶ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15499 (released Aug. 8, 1996).

³⁷ See, e.g., AT&T of New England and New England Tel. & Tel. Co. d/b/a/ NYNEX Requests for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, Commission Decisions on Arbitrated Issues at 102 (Maine P.U.C. Dec. 4, 1996) (10.61%); Consolidated Petition of AT&T Communications of the Southwest, Inc., and MCI Telecomm. Corp. and its Affiliates, including MCImetro Access Transmission Servs., Inc., for Arbitration with Southwestern Bell Tel. Co., Case Nos. TO-97-40 and TO-97-67 (Mo. Pub. Serv. Comm'n Dec. 11, 1996) at 33 (10.03%); In re the Interconnection Contract Between AT&T Communications of the Mountain States, Inc. and US West Communications, Inc., Docket No. 96-411-TC, Findings of Fact, Conclusions of Law and Order at 16 (N.M. State Corp. Comm'n Mar 20, 1997) (10.72%); Petition of AT&T for Compulsory Arbitration to Establish an Interconnection Agreement between AT&T and GTE; Petition of MCI for Arbitration and Mediation of Unresolved Interconnection Issues with GTE, Arbitration Award at 116-17 (Tex. P.U.C. Dec. 12, 1996) (10.58%); Petition of MFS Communications, et. al., Arbitration Award at 32, Docket Nos. 16189, 16196, 16226, 16285, 16290 (Tex. P.U.C. Nov. 7, 1996) (10.36%).

³⁸ Bradford Cornell, "Estimating the Cost of Capital of Local Telephone Companies for the Provision of Network Elements," (filed as an attachment to AT&T's Ex Parte Presentation - Proxy Cost Model Questions in CC Docket No. 96-45, February 12, 1997) ("Cost of Capital White Paper").

IV. THE COMMISSION'S CONDUIT RATE FORMULA SHOULD REFLECT A "ONE-THIRD," RATHER THAN "HALF-DUCT," CONVENTION.

The Commission has proposed applying the Massachusetts Department of Public Utilities' "half-duct" approach in determining the maximum permissible rate for conduit occupancy. NPRM ¶¶ 44-46. That method would significantly overstate the cost of conduit space, overcompensate conduit owners, and act as a barrier to entry. Instead, the Commission should adopt a "one-third-duct" presumption that will fully compensate conduit owners while reducing the impediments to local competition. And, in all events, a conduit owner should not be allowed to collect multiple charges for use of the same inner duct or other space.

The Commission has long recognized that multiple inner-ducts are usable in each conduit. Multimedia Cablevision ¶ 22. Indeed, the Multimedia Cablevision decision expressly left the door open to a "one-third-duct" or even "one-quarter-duct" methodology in a future proceeding. Id. at n.50. A "one-third" approach is plainly appropriate. Virtually all conduit can support at least three (and often four) inner-ducts -- each of which can contain one or more cables. In the Matter of AT&T Communications of the Southwest, Inc.'s Petition for Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Sec. 252(b) of the Telecommunications Act of 1996, Docket No. 96-395-U, (Initial Testimony of James Hurst on Behalf of Southwestern Bell Telephone Company at p. 13, ¶ 6.07 (Arkansas PSC, filed Dec. 20, 1996). In fact, most of the conduit being deployed today can accommodate four inner-ducts. For that reason, at least one RBOC has been ordered to utilize a "one-third-duct" approach. Application of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company, Cause No. PUC 960000218, "Report and Recommendations of the Arbitrator" (Oklahoma Corporation Commission, issued

November 13, 1996) at 15; aff'd, Application of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company, Cause No. PUC 960000218, "Order Regarding Unresolved Issues" (Oklahoma Corporation Commission, issued December 12, 1996) at 3.

Supporters of the half-duct alternative claim that only two inner-ducts are usable because one inner-duct must be reserved for maintenance or emergency needs. There are at least three problems with this argument. First, as noted above, much of the conduit in use today has four inner-ducts which would still leave three ducts available for use even if one inner-duct in every duct was reserved as a maintenance spare. Second, when conduit is actually laid in the ground, typically multiple conduits are placed in the trench. There is no operational reason to leave idle an inner-duct in each and every conduit, and utilities do not in practice do so; rather, a limited number of inner ducts are reserved to support the maintenance space requirements of the entire collection of conduits. Thus, reserving one inner-duct per conduit for maintenance or emergency needs vastly overstates the number of inner-ducts required for this purpose. Third, it has become common practice for telecommunications companies and utilities to occupy inner-ducts formerly reserved for maintenance and emergency use on a permanent basis as the demand for conduit grows. SWBT for one has agreed in state arbitrations to allow any unassigned inner ducts to be used by AT&T and other entrants. See Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops, et. al., Docket No. 16189, "Arbitration Award," Appendix A, Stipulation on Poles, Ducts, Conduits, and Rights-of-Way (Texas PUC, November 7, 1996). The Commission is thus surely correct in finding that "most ducts in conduits are considered usable." Multimedia Cablevision at ¶ 23. Consequently, the "half-duct" approach -- and even the "one-third-duct" approach to some extent -- forces entrants to unjustly

and unreasonably bear the cost of maintenance and emergency inner-ducts that will frequently be unavailable for maintenance or emergencies. Indeed, the Commission has already concluded that “[i]f the attacher has no right to use [the] space or receives no benefit from [the] duct, we propose that the denominator should not be reduced.” NPRM ¶ 45. Taken together, these factors conclusively demonstrate that the “half-duct” method cannot be justified, and that even a “one-third-duct” approach is likely to overcompensate conduit owners.

CONCLUSION

For the foregoing reasons, the Commission should: (1) clarify that an attacher pays for the use of a given amount of vertical space on a pole (or a given number of inner ducts in conduit) and that the attacher is free (subject to reasonable safety and operational restrictions) to deploy in that space the attachment or attachments of its choice -- without incurring multiple or discriminatory attachment charges that would unjustly enrich pole owners, raise barriers to entry, and discourage efficient use of pole space; (2) reject utility proposals to inflate pole rates through self-serving "technical" adjustments to the existing rate formula, such as the exclusion of safety space from the calculation of usable space; and (3) develop a conduit occupancy rate formula that generally tracks the pole attachment rate formula and reflects a "one-third duct" convention.

Respectfully submitted,

AT&T CORP.

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APPENDIX

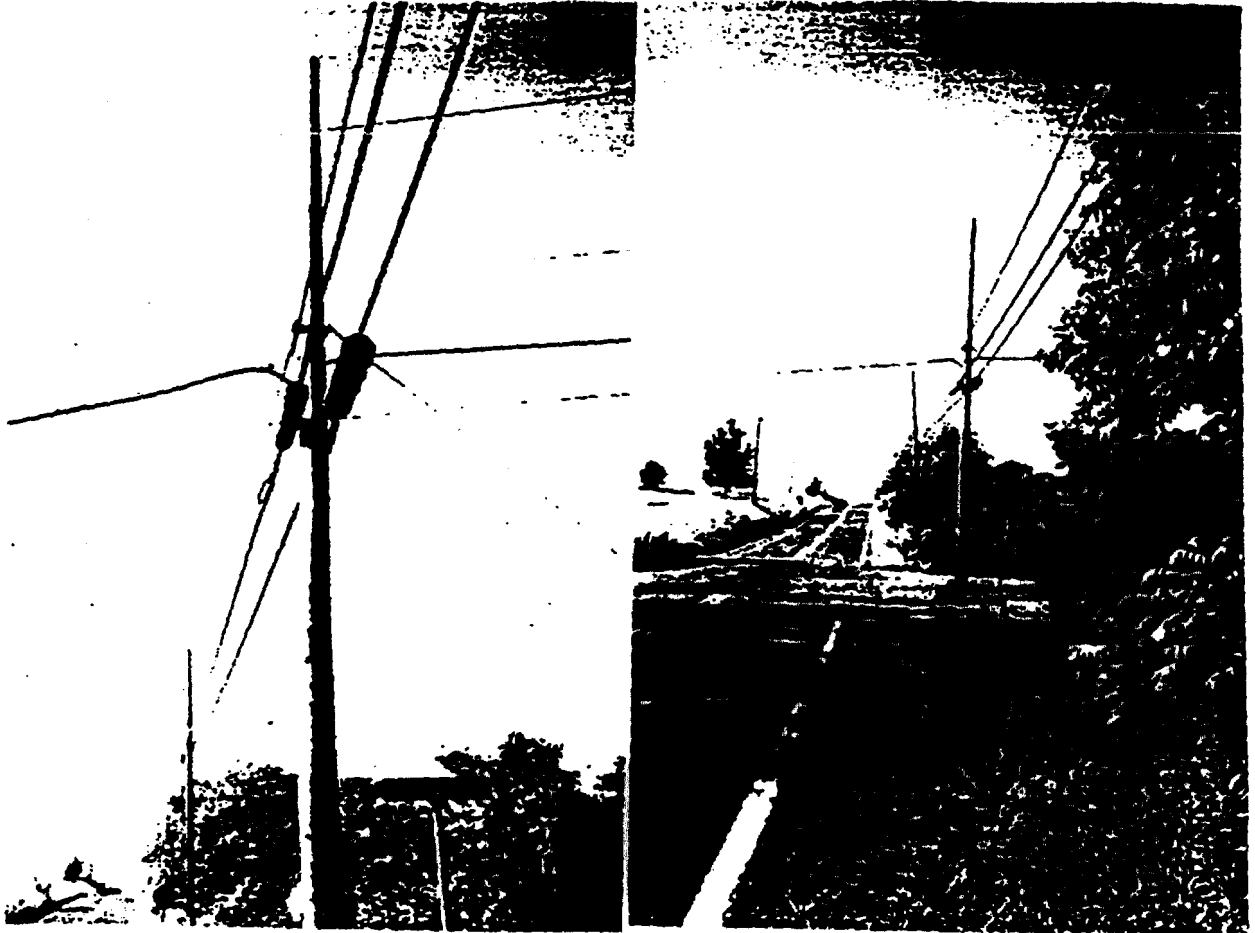
PICTURES DEPICTING CURRENT POLE ATTACHMENT PRACTICES

**PICTURE 1: POLE BRACKETS
WITH THREE SEPARATE ATTACHMENT LEVELS**



**Route 206 Bridgewater, NJ
Photo Taken June 1997**

PICTURES 2 & 3: DUAL SIDE ATTACHMENTS



Route 212 Pleasant Valley, PA
Photos Taken June 1997

PICTURES 4 & 5: DUAL SIDE ATTACHMENTS



Route 412 Hellertown, PA
Photos Taken June 1997

APPENDIX B

Reply Comments of AT&T Corp., submitted in Amendment of Rules and Policies Governing Pole Attachments, CS Docket No. 97-98 (1997).

In the Matter of

CS Docket No. 97-98

August 11, 1997

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SUMMARY

The comments submitted in this proceeding clearly demonstrate the continued need for Commission oversight of pole attachment rates, terms, and conditions. But some pole owners would have the Commission ignore their monopoly control over essential bottleneck inputs and immediately deregulate pole attachments. At the same time, they seek the ability to levy multiple charges for use of the same space, make unsubstantiated changes in the presumptions surrounding usable space and the amount of space used by an attachment, and overcharge conduit occupants or exclude them altogether. They also encourage the Commission to go far beyond the scope of this proceeding and abandon the historic cost methodology it has applied for nearly 20 years.

In Section I, AT&T discusses the ongoing ability and practices of pole and conduit owners to extract excessive rates from attachers. There are no viable alternatives to these existing structures and the emergence of competition for local telecommunications services only increases utilities' ability and incentive to engage in anticompetitive behavior. The danger of abuse is so obvious that even some pole owners have requested the protections afforded by the Pole Attachment Act.

As AT&T demonstrates in Section II, the Commission should resist electric utility attempts to extract multiple charges for use of the same unit of space. In a radical departure from past practice, these pole owners urge the Commission to allow a full additional charge for overlashed cables -- which use no additional pole space -- because they take up load capacity. In fact, the additional load impact of an overlashed cable is typically de minimis; rather, it is the electric utilities' much heavier power cables that have the largest load impact. And a few

commenters would exclude wireless attachments and transmission towers from the Commission's jurisdiction when they clearly fall within the statutory grant of authority.

Section III discusses the improper proposal by the electric utilities to supplant the current pole attachment rate methodology with a replacement cost approach. This proposal is clearly beyond the scope of this proceeding and, in any event, these commenters fail to demonstrate that a replacement cost standard is consistent with forward-looking economic principles or with the settled construction of the Pole Attachment Act.

In Section IV, AT&T shows that any negative book problems arising under the current rate formula would be best handled through the Commission's waiver process. Almost all commenters now reject the proposed removal of net salvage when the book value turns negative - including the proposal's original advocates. Not only would this approach present many difficulties, it would overcompensate pole owners and raise unnecessary barriers to entry. The gross book method presents its own problems. While its supporters admit that rates would increase, they provide no more than minimal discussion on the overall impacts of a gross book approach. In light of the overcompensatory characteristics of the current formula, the anticompetitive potential of such a widespread change in the Commission's formula cannot be justified absent significantly greater evidence. This overcompensation, however, does necessitate a further adjustment in the pole attachment methodology, namely the proration of total company ADT to the poles account.

Section V confirms that there is no justification for changing the Commission's presumptions about pole height or usable space. Utilities admit that poles 30 feet tall or less continue to be installed as well as used by third party attachers. Pole owners also continue to use

safety space and -- as the Commission has long held -- this space exists because of the presence of electric utilities. Finally, the Commission's current presumptions more than adequately account for line sag and the NESC's ground clearance requirements.

AT&T supports the Commission's efforts to map Part 31 accounts to Part 32 accounts. But, as AT&T shows in Section VI, electric utility proposals to vastly expand the accounts included in the Commission's formula are overreaching, bear no relationship to the cost of bare poles or conduit, and would produce overrecovery.

Finally, in Section VII, AT&T demonstrates that the Commission should employ a "one-third duct" convention. Indeed, the evidence introduced by some commenters would support a "one-quarter duct" or higher approach. Moreover, electric utility claims that their conduit cannot be shared is countered by their own practices and the NESC. Hence, when other parties occupy their conduit, the electric utilities should be allowed only to assess a rate consistent with the "one-third duct" convention as well.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
)

Amendment of Rules and Policies)
Governing Pole Attachments)
_____)

CS Docket No. 97-98

REPLY COMMENTS OF AT&T CORP.

Pursuant to the Commission's Notice of Proposed Rulemaking,¹ AT&T Corp. ("AT&T") hereby submits its reply comments with respect to the designated issues concerning pole attachment rates.

INTRODUCTORY STATEMENT

In its initial comments, AT&T stressed the importance of Commission oversight of pole attachment rates and practices to efficient facilities-based telecommunications competition. The comments submitted in this proceeding only underscore the need for continued Commission intervention. Most telling are the claims made by pole and conduit owners themselves. Many of these commenters urge the Commission immediately to deregulate pole attachment rates and rely on market forces in the "spirit of competition" that underlies the Telecommunications Act of 1996 ("1996 Act"). The Telecommunication Act does seek to promote competition in local

¹ Amendment of Rules and Policies Governing Pole Attachments, CS Docket No. 97-98, Notice of Proposed Rulemaking (released March 14, 1997) ("NPRM").

telecommunications markets for the first time, but it attempts to do so by breaking the stranglehold that local utilities have on bottleneck inputs like poles and conduit, not by allowing the owners of these essential facilities unilaterally to dictate the terms and conditions for access.

Pole and conduit owners also propose radical changes from the Commission's current attachment rate formula. For example, certain electric utilities advocate scrapping the formula altogether and substituting a new "replacement cost" formula. Even ignoring that these utilities propose mixing forward-looking and historic costs in order to capture the most inflationary features of each regime, their "replacement cost" proposals are beyond the scope of this proceeding and conflict with settled interpretations of the Pole Attachment Act. But the electric utilities go further, seeking to load a smorgasbord of additional Federal Energy Regulatory Commission ("FERC") expense accounts into the pole attachment formula. Many of these accounts bear no relation to pole or conduit costs, and including them would both produce massive overrecoveries and unnecessarily increase the complexity of a formula that both Congress and the Commission have properly sought to keep as straightforward as possible.

The electric utilities' proposed changes do not end with these broad measures. Electric utilities take the internally inconsistent position that the presumptive pole height should be increased, while the amount of usable space should be decreased, when the obvious and direct result of a pole height increase would be an increase in the amount of space available for attachments. They also seek (i) multiple charges for the same pole space, (ii) unwarranted and costly "safety" and "administrative" restrictions on pole attachments, (iii) unsupported changes in the presumptions relating to the physical characteristics of poles designed artificially to decrease

usable space, and (iv) conduit rates based on the false premise that they cannot be forced to share conduit.

And now some electric utilities are apparently taking the incredible stance that -- despite almost 20 years of unchallenged pole attachment regulation -- the Commission has no authority to prescribe pole attachment rates. See Order, Amendment of Rules and Policies Governing Pole Attachments, CS Docket No. 97-98 ¶ 3 (released July 25, 1996) (the electric utilities "contend that issues raised in the instant proceeding parallel issues decided in *Iowa Utility Board*"). Specifically, the electric utilities contend that *Iowa Utils. Bd. v F.C.C.*, No. 96-3321, 1997 WL 403401 (8th Cir. July 18, 1997) has relevance here. It plainly does not. In *Iowa Utils. Bd.*, the Eighth Circuit vacated certain of the Commission's interconnection, unbundling and resale pricing rules on the theory that § 252 of the 1996 Act places exclusive authority over such matters in the states. Whatever the merit of that construction of the 1996 Act, the electric utilities ignore that the Pole Attachment Act (47 U.S.C. § 224) grants the Commission express authority to "regulate the rates, terms, and conditions for pole attachments," § 224(b)(1) except "where such matters are regulated by a State." § 224(c)(1).

These anticompetitive tactics should remove any doubt that the Commission must remain vigilant in protecting attachers. As detailed below, the Commission can do so here by rejecting the utilities' baseless attempts to "overhaul" the Commission's interim rate formula and by clarifying that double-charging and other discriminatory and anticompetitive practices violate the Pole Attachment Act and the Commission's rules.

I. THE COMMENTS CONFIRM THAT POLE AND CONDUIT OWNERS CAN AND WILL BEHAVE ANTICOMPETITIVELY AND EXTRACT EXCESSIVE FEES FROM ATTACHERS ABSENT THE PROTECTIONS AFFORDED BY THE COMMISSION'S RULES.

As they have in virtually every proceeding since enactment of the Pole Attachment Act, the electric utilities urge the Commission to relax its regulatory oversight and let "market forces" determine attachment rates. But significant market forces simply do not exist for poles and conduit. Just as they did two decades ago when Congress passed the Pole Attachment Act, utilities still "control the essential corridors that cable operators and competitive telecommunications companies need to provide service." NCTA at 45.

Indeed, the comments in this proceeding confirm that pole (as well as conduit and other structure) monopolies are, if anything, stronger and more entrenched than at the time of the Pole Attachment Act of 1978. Even electric utilities agree, for example, that local government "safety and aesthetic" regulation that exacerbates the already formidable difficulties in installing new poles and conduit is on the rise. The Electric Utilities Coalition at 67 ("Electric Utilities I"). See also WorldCom at 4-5 ("[m]any local municipalities encourage, and often mandate, that other entities, such as new telecommunications service providers, utilize these existing poles, ducts, conduits, and other existing facilities").² And, notwithstanding half-hearted attempts by a few electric

² See also TCI at 4 ("attempts to construct or acquire new poles, conduit, ducts, and rights-of-way are impeded or prevented not only by economic barriers, but also by State and local government regulation") (citing Federal Preemption of Moratoria Regulation Imposed by State and Local Governments on Siting of Telecommunications Facilities, DA 96-2140, Petition for Declaratory Ruling of the Cellular Telecommunications Industry Association (filed Dec. 16, 1996) (documenting over 110 state and local moratoria on telecommunications facility siting)). In addition, many local governments already impose exorbitant franchise fees and delay issuing permits in reasonable time frames.